IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4235 of 1996
With
SPECIAL CIVIL APPLICATION No. 5361 of 1996
With
SPECIAL CIVIL APPLICATION No. 5627 of 1996
With
SPECIAL CIVIL APPLICATION No. 6471 of 1996
With
SPECIAL CIVIL APPLICATION No. 6473 of 1996
With
SPECIAL CIVIL APPLICATION No. 4552 of 1996
To
SPECIAL CIVIL APPLICATION No. 4553 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UTKARSH EDUCATION SOCIETY & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

SCA NO.4235/96

MR DD VYAS, Sr. Advocate for Petitioner(s) : 1 - 2.
Mr SIRAJ GORI, AGP for Respondent(s) : 1 – 2.

SCA NO.5361/96
MR AMIT M PANCHAL for the petitioners
MR SIRAJ GORI, AGP for respondent Nos.1 to 3
M/S.TRIVEDI & GUPTA for respondent Nos. 4 & 5.

SCA NOS.4552 & 4553 OF 1996

MR KM THAKAR FOR M/S.TRIVEDI & GUPTA for the petitioners
MR SIRAJ GORI, AGP for respondents

SCA NOS.6471 & 6473 OF 1996
MR BAIJU JOSHI FOR MR.MILAN JOSHI for the petitioners
MR SIRAJ GORI, AGP for respondent

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/07/2006

ORAL JUDGMENT

1. In this group of petitions, the petitioners who are running secondary and higher secondary schools have challenged a resolution dated 1st June 1996 issued by the State Government. The petitioners also challenge the consequential orders passed by the State Government in terms of the said resolution.
2. Since the factual aspects involved in these petitions are similar in all these petitions, it would be useful to notice the facts as stated in Special Civil Application No.4552 of 1996.
3. Petitioner No.1 in the said Special Civil Application No.4552 of 1996 is a trust registered under the Bombay Pubic Trusts Act. Petitioner No.2 is the Secretary of the trust. The petitioners run a school which is a

recognized school and receiving grant-in-aid from the Government. School of the petitioners thus receives maintenance and salary grant from the Government. The staff salary is made directly by the Government under the direct payment scheme.

4. By a resolution dated 1st June 1996, the State Government decided to discontinue the payment of grant to those schools which are run by the Government or by the private industrial units. In the resolution dated 1.6.96, it is stated that the State Government finds that in the State there are number of secondary and higher secondary schools managed directly or indirectly by the State or the Central Government public undertakings or private industrial units. In such schools, majority of the students are children of the employees of such units. The Government finds that such schools should be run by the public undertakings/industrial units as a part of their social obligation and expenditure for the same should be borne by them from their own funds. The Government should not be made to

bear the financial burden of such schools. To the extent that such funds can be saved by the Government, the same can be diverted for establishment of other schools which genuinely require such financial assistance. The Government, therefore, has decided to discontinue the payment of grant to such secondary and higher secondary schools from the academic year 1996-97 with effect from 1st July 1996. The resolution also provides for certain guidelines for deciding whether a school is directly or indirectly managed by public under taking/industrial unit. Following four criteria have been laid down.

i) Such schools whose complete management is in the hands of such units.

(ii) Such schools which are registered as trusts or societies and if they have representatives of the units from the amongst the members of the managing body;

(iii) Such schools which have majority of the students who are children of the public undertaking/industrial unit.

(iv) Such schools which are located in the premises of the unit.

Th resolution further provides that the above conditions are only in the nature of example and are not meant to be exhaustive. It provides that upon the schools fulfilling any of these conditions, it shall be taken that the management of such school is directly or indirectly in the hands of the industrial unit.

5. On the basis of the said resolution, the State Government passed order dated 21.6.96 discontinuing the payment of grant to the schools run by these petitioners.
6. These petitioners have, therefore, filed the petitions challenging the Government resolution as well as the consequential orders passed discontinuing the payment of grant.
7. The factual aspects arising in all these petitions are materially identical. It is thus the case of the petitioners that the Government all of a sudden decided to discontinue the grant

in aid facility to the schools run by the petitioners and consequential orders were also passed without any further formality. Broadly stated, the grievance of the petitioners is that such a resolution could not have been implemented so far as the schools run by the petitioners are concerned since the resolution does not provide for any guidelines and that the schools run by the petitioners are not managed directly or indirectly by any industrial establishment. It is further contended that in any case, the Government cannot divest of its responsibility to provide grant for secondary and higher secondary education since to provide for basic education is one of the prime duties of the Government.

8. On the other hand, the case of the Government is that as a matter of policy decision, the Government decided to discontinue grant in favour of schools which are being run directly or indirectly by the industrial establishments. The Government found that industrial units, whose employees' children are the main

beneficiaries of such schools, should come forth and bear such a burden as a social obligation.

9. Learned advocate Shri Thakar appearing for the petitioners in Special Civil Application No.4552 of 1996 and other connected matters submitted that the resolution passed by the Government is illegal and unlawful. He contended that the resolution gives unguided and uncanalized powers to the authorities to categorize the schools as one directly or indirectly managed by the industrial establishments. He submitted that such powers are possible of arbitrary use. The principle of promissory estoppel was also sought to be pressed in service. He submitted that on the assurance that the schools shall continue to receive the grant-in-aid, the petitioner-Trust started the schools. It is thereafter not open for the Government to discontinue the grant. He also submitted that the principle of reasonable expectation would also apply in the present case.

10. The resolution was sought to be assailed on the ground of breach of equality clause enshrined in

Article 14 of the Constitution of India. He submitted that identically placed schools are being discriminated for different treatment. He submitted that the petitioners are either trusts registered under the Bombay Public Trusts Act or Societies registered under the relevant provisions of the Societies Act and there is no distinction between these petitioners and other school managements who run their schools. He, therefore, submitted that simply because some industrial unit or establishment is perhaps interested in running of schools, that by itself cannot be a ground for the Government to withdraw its grant. The actual orders discontinuing the grant passed against the individual schools were sought to be challenged on the ground that the same were passed without giving an opportunity of hearing to the management. Such orders were also sought to be challenged on the ground that the same were passed without application of mind. The said orders were also sought to be challenged on the ground that the orders were passed without

holding inquiry or collection of any material to find out whether the conditions provided in the resolution applied to such schools or not.

11. Learned Senior advocate Shri DD Vyas appearing for the petitioners in Special Civil Application No.4235 of 1996, in addition to what was already canvassed by learned advocate Shri Thakar, submitted that the Government cannot discontinue the grant in aid facility citing financial scarcity as a reason. He contended that it is a State obligation to provide for education. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Chandigarh Administration v. Rajni Vali, (2000) 2 SCC 42 in this regard. Reliance was also placed on the decision of learned single Judge of this Court in an order dated 6.7.2001 passed in Special Civil Application No.5795 of 1999 and connected matters wherein the learned single Judge was pleased to observe that additional financial burden on the State is not a ground for meting out discriminatory treatment in terms of grant in aid policy.

12.On the other hand, learned AGP Shri Gori opposed the petitions. He submitted that it is a matter of Government policy and it is for the Government to decide in what manner to provide for grant in aid. He submitted that the Government's finance did not permit covering all secondary and higher secondary schools in the State within the grant-in-aid policy. He further submitted that this Court in exercise of writ jurisdiction would not interfere in the matter of Government policy unless the same is found to be contrary to any statutory provisions.

12.1He further submitted that the industrial units whose employees' children are the prime beneficiaries of such schools should come forward as a social obligation to provide for basic education. If the Government, therefore, decides to shift the burden on such industrial establishments and to divert the surplus funds to other schools which require such assistance, such a policy cannot be found fault with.

12.2 Reliance was placed in the case of State of Bihar v. Dilip Kuamr Mishra, (2005) 12 SCC 133 to

contend that to receive grant-in-aid is not a fundamental right. It was also contended that sufficient guidelines have been provided in the resolution itself to avoid any arbitrary application of the Government policy.

13. Having heard the learned advocates appearing for the parties, it can be seen that the Government as a policy decision decided to withdraw from the financial burden of funding schools which are managed directly or indirectly by the industrial units situated in the State. The philosophy behind such a decision is stated in the resolution itself. It records that as a social obligation, such industrial establishments should carry out the burden of providing education for the children of their employees. The Government proposed to divert the excess fund for funding other schools which require such assistance. It cannot be gainsaid that the Government has financial limitations and it is not possible to provide grant for all schools situated in the State. The Government, therefore, is expected to be and permitted to be

selective about giving grant to different schools. Therefore, if as a policy matter, the Government found that it is not possible or necessary to fund the schools which are administered directly or indirectly by industrial units, I do not find that such a policy decision can be interfered with. The logic behind the policy is quite understandable. Such schools educate children predominantly of the employees of the industrial undertakings. The surplus fund that the Government may save in the bargain can be utilized for funding other schools which genuinely require such assistance. As a social obligation, industrial establishments can be expected to pump in a part of their earnings to provide for at least basic education of the children of their employees. In any case, this is not meant to be a compulsion and it is for the school Management to decide whether to continue such schools or not. In that view of the matter, I do not find that as a policy, the Government resolution requires any interference.

14. The Hon'ble Supreme Court has laid down time and again that this Court in exercise power under Article 226 of the Constitution should not normally interfere with the Government policy unless the same is found to be opposed to constitutional or statutory provisions or wholly arbitrary. Reference in this regard can be made to the decisions of the Hon'ble Supreme Court reported in AIR 2003 SC 1344 and AIR 2004 SCW 3888. Having said so, the policy requires a closer look.

15. In the resolution, the Government provided for four conditions to fulfill to come to the conclusion that the school is actually managed by an industrial unit. Those conditions have been outlined hereinabove. So far as first condition is concerned, there cannot be any debate. If the administration of the school is entirely in the hands of the industrial unit, the same would fall within the mischief of the resolution. Regarding the 4th condition provided in the resolution also, I find that the same is perfectly in order. If the school is

located in the premises of the industrial unit, a strong presumption would arise that the same is for the benefit of the children of the employees and is directly or indirectly managed by the industrial unit.

16. Conditions Nos.2 & 3, however, pose certain questions. In condition No.2, it is provided that if the management is registered as a trust or a society and if there is any representative of a industrial unit in the body of management,such a school shall be taken to have been directly or indirectly managed by the industrial unit. In a large body of management, if there is a trustee who happens to be a representative of an industrial unit, whether in a personal capacity or otherwise, such a school would come within the mischief of the resolution. I do not find that such a condition can be upheld. Only if it is found that the industrial unit holds considerable control over the management through its representatives, can such a conclusion or deeming fiction arise. This condition, therefore, is quashed.

17.Condition No.3 also appears to be too wide in its purport. It states that in a school, if majority of the students are children of employees of an industrial undertaking, such a school shall be deemed to have been run directly or indirectly by the industrial unit. In a given case, it may happen that a school which is run entirely by an unconnected trust simply on account of the geographical closeness of the industrial establishment may have majority of the students who are children of the employees of such an establishment. That by itself cannot give rise to an irretrievable presumption that such a school is run by the industrial unit. This condition in its present form therefore also cannot be sustained and is therefore hereby quashed. This, however, is not to suggest that in a given case, the authorities upon available material on record cannot come to a conclusion that a particular school is actually directly or indirectly managed by an industrial unit. This, however, shall have to be on the basis of each individual case and on the basis of the

material that may be collected.

18. I do not find that the circular gives unguided powers to the authority. The broad parameters of consideration are laid down by the Government and certain discretionary powers vested in the authority cannot be termed as unlimited or unguided powers and it is always necessary that in application of such policy matters degree of discretion is saved.

19. Similarly, principle of estoppel cannot apply in the present case. The petitioners have not demonstrated how the promise was held out to give for ever grant-in-aid. Grant in aid has to be received within the parameters of the Government policy. If that policy later on changes, the earlier beneficiary of grant-in-aid cannot complain of discontinuation thereafter.

20. I also do not find that the Government policy violates the equality clause of Article 14 of the Constitution. It is not possible to accept that there is no nexus with the objects sought to be achieved. The background philosophy

leading to the issuance of the resolution has been noted and discussed above. The resolution provides for its application to a particular distinct class of schools and the criteria is intelligible and the resolution, therefore, provides for a different treatment to a class of schools who fall within the ambit of the resolution. Though hostile discrimination is frowned upon under Article 14 of the Constitution, reasonable classification is always permissible. I therefore do not find that equals are treated as unequals nor do I find that the Government has created a hostile discrimination against the petitioners.

21. It is also not possible to accept the contention that the Government must in all cases provide for grant in aid. The financial resources and limitations of the funds would be a relevant consideration which would permit the Government to be selective about the institutions which can be funded through grants. In the case of State of Bihar v. Dilip Kumar Mishra (supra), the Hon'ble Supreme Court found that to receive

grant is not a matter of right. The decisions cited by learned advocate Shri Vyas are of different context. It is undoubtedly true that to discharge its legal obligation and to provide for a uniform grant in aid policy, shortage of fund cannot be pressed in service. This, however, does not mean that the Government cannot formulate its policy to be applied uniformly which governs the question of giving grants.

22. With respect to individual orders cancelling grant of the schools, however, I find that the orders were passed without giving any opportunity of hearing to the individual petitioners. In view of the changed policy, whether the schools would be covered for exclusion for grant or not is a question which would have to be considered by the authority from the available material on record. Such exercise cannot be unilateral nor can it be made a fate accompli by passing an order against the concerned management without their participation. In that view of the matter,

though this Court would be inclined to uphold the resolution substantially subject to the above direction for cancellation of condition Nos.2 and 3, the individual orders cancelling grant cannot be sustained.

23. In the result, the petitions are allowed in part. The impugned resolution dated 1st June 1996 is upheld subject to quashing of conditions Nos.2 & 3. Individual orders cancelling grants of the petitioners are, however, quashed. It would be open for the respondents to pass fresh orders in accordance with law after hearing the petitioners after collecting necessary material in this regard.

24. It may be noted that while admitting these petitions, the petitioners were protected against discontinuation of grants. The petitioners have thus received grants from the Government. The petitioners have not charged any fees to the students and whatever fees that might have been collected would have been deposited with the Government. It would, therefore, not be proper to permit the

Government to pass any order with retrospective effect. The same would be wholly inequitable and would put the petitioners to undue hardship since it would not be possible for the petitioners to collect the funds from the students who have already passed out and adjust the fees already deposited with the Government. Therefore, whatever order the Government may pass shall operate only prospectively.

25. The petitioners have stated that though the Government will discontinue payment of grant, all other attendant limitation of grant-in-aid institution will still continue as far as the petitioners are concerned, meaning thereby, though the petitioners will not receive grants from the Government, there would be limitation of charging of fees and other similar restrictions. Needless to say that once the Government withdraws the grant, the status of the schools of the petitioners will be like any other non grant-in-aid schools.

26. The petitions are allowed in part as aforesaid with no order as to costs. Rule is made absolute

to the above limited extent only.

(Akil Kureshi, J.)

(vjn)